#### IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

# IN AND FOR KENT COUNTY

THOMAS O. JACKSON, JR., :

: C.A. No. K11C-10-008 WLW

Plaintiff, :

:

v. :

:

ANN AGLIO, :

:

Defendant. :

Submitted: March 24, 2014 Decided: April 2, 2014

#### **ORDER**

Upon Plaintiff's Motion for Partial Summary Judgment as to Past Lost Wages. *Denied*.

David A. Boswell, Esquire of Hudson Jones Jaywork & Fisher, LLC, Lewes, Delaware; attorney for Plaintiff.

Mary E. Sherlock, Esquire of Weber Gallagher Simpson Stapleton Fires & Newby, LLP, Dover, Delaware; attorney for Defendant.

WITHAM, R.J.

The issue before the Court is whether the Court should grant Plaintiff's Motion for Partial Summary Judgment awarding Plaintiff \$34,680 in past lost wages.

### **BACKGROUND**

This negligence action arises from a car accident that occurred in Seaford on October 5, 2009. Defendant Ann Aglio (hereinafter "Defendant") allegedly failed to yield while driving her vehicle, causing a collision between her vehicle and Plaintiff Thomas O. Jackson, Jr. (hereinafter "Plaintiff"), who was driving his motorcycle at the time. The parties have stipulated that Defendant's negligence was the sole and proximate cause of the accident. The sole issue in this case is the nature and extent of Plaintiff's damages.

Plaintiff was laid off by his previous employer shortly before the accident, and was unemployed on October 5, 2009. Plaintiff was scheduled to start a new job on October 6; however, according to Plaintiff, the job was only supposed to last 4 to 6 weeks. Plaintiff ultimately never started the job.

Plaintiff suffered injuries to his left leg as a result of the accident. Plaintiff's treating physician released Plaintiff to light to medium duty work on November 30, 2010. Plaintiff was released to full duty work without restrictions on March 15, 2011. Plaintiff admits that prior to his release to light to medium duty work in November of 2010, Plaintiff earned \$6,695 from working various "odd jobs" in the fall of 2010.

On February 25, 2014 Plaintiff filed a Motion for Partial Summary Judgment as to Past Lost Wages. Specifically, Plaintiff seeks an award of \$34,680 in past lost wages. Plaintiff bases this amount on his historic rate of pay of \$17 per hour at 40 hours per week from October 5, 2009 through September 30, 2010. Plaintiff provides

no other information as to how he calculated this amount, other than stating that this is a "conservative" assertion of his lost wages.

#### STANDARD OF REVIEW

Summary judgment will be granted when, viewing all of the evidence in the light most favorable to the nonmoving party, the moving party demonstrates that "there are no material issues of fact in dispute and that the moving party is entitled to judgment as a matter of law." This Court shall consider the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any" in determining whether to grant summary judgment. When material facts are in dispute, or "it seems desirable to inquire more thoroughly into the facts, to clarify the application of the law to the circumstances," summary judgment will not be appropriate. However, when the facts permit a reasonable person to draw but one inference, the question becomes one for decision as a matter of law.

## **DISCUSSION**

Defendant opposes Plaintiff's Motion for Partial Summary Judgment on the grounds that there "clearly are many questions of fact" concerning Plaintiff's claim

<sup>&</sup>lt;sup>1</sup> Burkhart v. Davies, 602 A.2d 56, 59 (Del. 1991 (citing Benge v. Davis, 553 A.2d 1180, 1182 (Del. 1989)); see also Del. Super. Ct. Civ. R. 56(c).

<sup>&</sup>lt;sup>2</sup> Del. Super. Ct. Civ. R. 56(c).

<sup>&</sup>lt;sup>3</sup> Ebersole v. Lowengrub, 180 A.2d 467, 468-69 (Del. 1962) (citing Knapp v. Kinsey, 249 F.2d 797 (6th Cir. 1957)).

<sup>&</sup>lt;sup>4</sup> Wootten v. Kiger, 226 A.2d 238, 239 (Del. 1967).

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for past lost wages. The Court is inclined to agree. There is a genuine dispute of material fact as to whether Plaintiff is entitled to lost wages as a result of the 2009 car accident, and as to whether \$34,680 is an accurate estimation of Plaintiff's lost wages.

Plaintiff acknowledges that he was unemployed at the time of the accident, and that he never worked the temporary job Plaintiff was supposed to begin the day after his accident. The exact nature of this job is unclear: Plaintiff characterizes it as an "interim position" that was to last four to six weeks and pay \$30 an hour, whereas Defendant contends that the job was even less formal than that, as the purported employer had never advertised the position Plaintiff would supposedly have filled and Plaintiff never filled out any job application or tax form for the job. Thus, viewing the record in the light most favorable to Defendant, it appears there was no guarantee that Plaintiff had a job waiting for him the day after the accident.

Even if it was guaranteed that Plaintiff would in fact start this job on October 6, 2009, it is unclear how long the job would last. Plaintiff characterizes the job as an "interim" position that could have lasted between four to six weeks. Further, Plaintiff's motion states that Plaintiff was "continu[ing] his search for a permanent job" at the time of the accident. Whether Plaintiff planned to complete the interim job before accepting a permanent position elsewhere, or whether Plaintiff would have left the interim position upon securing permanent employment, is also unclear.

Finally, the basis for Plaintiff's claimed \$34,680 in lost wages is not readily discernible from the record. The Court struggles to see how Plaintiff can calculate lost wages based on a historic rate of pay at a full-time basis when Plaintiff was unemployed at the time of the accident, and when his temporary job (which, as can

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best be inferred from the record, does not appear to have been a full-time position)

had not yet started. Further, it is not clear whether this amount takes into account the

\$6,695 in so-called "odd jobs" Plaintiff engaged in before his treating physician

released him to work.

In sum, there are several genuine disputes of material fact pertaining to the

state of Plaintiff's employment at the time of the accident. It is desirable to inquire

more thoroughly into the facts, specifically the exact nature of Plaintiff's "interim

position" that was slated to begin the day after the accident, and the accuracy of

Plaintiff's claimed \$34,680 in past lost wages.

**CONCLUSION** 

Plaintiff's Motion for Partial Summary Judgement as to Past Lost Wages is

DENIED.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.

Resident Judge

WLW/dmh

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